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10/506,292	03/18/2005	Huib Maat	W&K004US	3205
7590	08/07/2007		EXAMINER	
Paul Grandinetti Levy & Grandinetti 1725 K Street N W Suite 408 Washington, DC 20006-1419			YOO, REGINA M	
			ART UNIT	PAPER NUMBER
			1744	
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			08/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/506,292	MAAT, HUIB
	<b>Examiner</b>	<b>Art Unit</b>
	Regina Yoo	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 July 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-51 is/are pending in the application.  
 4a) Of the above claim(s) 30,31,42,43,49 and 50 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-29, 32-41, 44-48, 51 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. <u>20070802</u>
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>9/20/04, 9/30/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-29, 32-41, 44-48 and 51 in the reply filed on 7/11/07 (also per attached Interview Summary) is acknowledged.. The traversal is on the ground(s) that the corresponding special technical feature between the three groups is not taught by the references. This is not found persuasive because both of the references do disclose a candle with at least one of the distinct phases comprising between 0.0001 w/w% to 99 w/w% of an active volatile material as disclosed in the previous office action and on page 3 of Applicant's Remarks/Argument.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 30-31, 42-43 and 49-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group and/or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7/11/07.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 2, 4, 10-13, 15-16, 23, 29, 33 and 39 are rejected under 35

U.S.C. 102(b) as being anticipated by Conover (6079975).

As to Claims 1 and 4, Conover ('975) discloses a candle (10) comprising at least two distinct phases (13, 14, 15) wherein at least one of the phases comprises from 0.0001% w/w to 99% w/w of an active volatile material (see entire document, particularly Col. 2, lines 34-42).

As to Claim 2, Conover ('975) discloses that the candle (10) wherein the active volatile material is a fragrance (see entire document, particularly Col. 2, lines 6-43).

As to Claims 10 and 11, Conover ('975) discloses that the candle (10) wherein the two phases comprise a first layer (13, 14) and at least a second layer (15) which is an outer layer (see Figure 2) wherein the outer layer comprises from 0.0001% w/w to 99% w/w of an active volatile material (see Col. 2, lines 40-42).

As to Claim 12, Conover ('975) discloses that the candle (10) wherein the first layer (13, 14) comprises a core and the outer layer (15) is a shell (see Figure 2).

As to Claims 13 and 15-16, Conover ('975) discloses that the candle (10) wherein the core comprises from 0.000% to 99% w/w of an active volatile material in the form of a fragrance (see Col. 2, lines 37-40).

As to Claim 23, Conover ('975) discloses that the candle (10) wherein the at least one of the phases comprises paraffin wax (see entire document, particularly Col. 12-13 and 65-66).

As to Claim 29, Conover ('975) discloses that the candle (10) wherein the candle (10) comprises at least two volatile active materials in one or more phases (13-15) is different fragrances (see Col. 2, lines 6-43).

As to Claim 33, Conover ('975) discloses that the candle (10) wherein at least one of the phases acts as a bonding, sealing, separating, barrier, supporting, or coating agent, or a combination thereof on the other phase (see Col. 3, lines 25-33).

As to Claim 39, Conover ('975) discloses that the candle (10) wherein in normal use at least one of the phases (13-15) is vertically oriented (see Figures 1-2).

5. Claims 1-3, 5-9, 19, 22-25, 32, 37-39, 47 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Elliott, III (20020022205).

As to Claim 1, Elliott, III ('205) discloses a candle (10, 20, 30, 40) comprising at least two distinct phases (12, 14; 22, 24; 32, 34; 42, 44) wherein at least one of the phases comprises from 0.0001% w/w to 99% w/w of an active volatile material (see entire document, particularly page 6, paragraphs [0056]-[0057]).

As to Claims 2-3, Elliott, III ('205) discloses that the candle (10, 20, 30, 40) wherein the active volatile material is selected from the group consisting of an insect repellent (see page 6, paragraph [0057]) and a fragrance (see page 6, paragraph [0056])

As to Claims 5-9 and 20-21, Elliott, III ('205) discloses that the candle (10, 20, 30, 40) wherein the active volatile material is a fragrance contained in one (12, for example) of the phases (12, 14) comprises up to 20 % w/w (see page 6, paragraph [0056]) and one or both of the phases comprise a single layer (see Figures 1-4).

As to Claim 19, Elliott, III ('205) discloses that the candle (40) wherein one or both of the phases comprise a single layer or a plurality of layers (see Figures 1-4) and at least one of the layers comprises from 0.0001% w/w to 99% w/w of an active volatile material selected from the group consisting of an insect repellent (see page 6, paragraph [0057], wherein the "conventional amounts as known in the art" is deemed to include the range between 0.0001% w/w to 99% w/w).

As Claims 22, Elliott, III ('205) discloses that the candle (40) wherein at least one of the phases (12, 22, 32, 42) comprises an olefin (see page 4, paragraphs [0033]-[0035], for example, ethylene/propylene copolymers is an olefin).

As to Claim 23, Elliott, III ('205) discloses that the candle (40) wherein at least one of the phases comprises a material selected from the group consisting of: a linear  $\alpha$ -olefin (see page 5, paragraphs [0047]-[0048] where oligomers of 1-decene is linear  $\alpha$ -olefin) and another material selected from the group consisting of paraffin wax and beeswax (see page 2, paragraph [0025]).

As to Claims 24-25 and 27, Elliott, III ('205) discloses that the candle (40) wherein the two phases (42, 44) comprise a first phase (42) which is an inner core and a second phase (44) which is at least one outer layer (see Figures 4A and 4B) wherein at least one (42 and/or 44) of said phases comprises from 20 to 70% or 40-60% by weight of a linear  $\alpha$ -olefin or a mixture of linear  $\alpha$ -olefins (see page 3, paragraph [0028], page 4, paragraph [0038] and page 5, paragraph [0042]).

As to Claim 32, Elliott, III ('205) discloses that the candle (40) wherein at least one (14, 24, 34, 44) of the phases does not comprise an active volatile material (see page 3, paragraph [0028] and page 6, paragraph [0056] where these paragraphs state that fragrance are located in candle base material, which is that of the core/the other phase, and that the phase (14, 24, 34, 44) is made entirely of one or more flame retardant and deemed to not contain any candle base material).

As to Claim 37, Elliott, III ('205) discloses that the candle (10, 20, 30, 40) wherein it is either a free-standing or a candle in an open container (see page 7, claims 22-23).

As to Claim 38, Elliott, III ('205) discloses that the candle (10, 20, 30, 40) wherein in normal use at least one of the phase is horizontally oriented (see Figures 1-3 and 4B).

As to Claim 39, Elliott, III ('205) discloses that the candle (40) wherein in normal use at least one (44) of the phase is vertically oriented (see Figures 4B-4C).

As to Claim 47, Elliott, III ('205) discloses that the candle (10, 20, 30, 40) wherein at least one of the phases comprises a transparent material (see page 2, paragraph [0024]).

As to Claim 51, Elliott, III ('205) discloses that the candle (10, 20, 30, 40) wherein the candle is capable of having an improved burn performance and thus is deemed to meet the limitation.

6. Claims 1 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Wesley (20030086815).

Wesley ('815) discloses a candle (10) comprising at least two distinct phases (12/26, 14, 44) wherein at least one of the phases (44) comprises from 0.0001% w/w to 99% w/w, more specifically 35-70% w/w, of an active volatile material in the form of fragrance and an insect repellent (see entire document, particularly page 3, paragraphs

[0028] and [0031]) and at least one (12/26) of the phases comprises metal, plastic, ceramic, or glass (see page 2, paragraph [0021] and [0023]).

7. Claims 1, 40 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Marcus (4568270).

As to Claim 1, Marcus ('270) discloses a candle (10) comprising at least two distinct phases (12, 14) wherein at least one (14) of the phases comprises from 0.0001% w/w to 99% w/w of an active volatile material (see entire document, particularly Abstract).

As to Claim 40, Marcus ('270) discloses that the phases (12, 14) of the candle (10) have different melting rates (see entire document, particularly Col. 8, lines 35-36)

As to Claim 41, Marcus ('270) discloses that the candle (10) comprises a plurality of wicks (see Col. 3, lines 23-24).

As to Claim 51, Marcus ('270) discloses that the candle (10) wherein the candle is capable of having an improved burn performance and thus is deemed to meet the limitation.

8. Claims 1, 44-46 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Tendick (4892711).

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As to Claim 1, Tendick ('711) discloses a candle (10) comprising at least two distinct phases (18, 44) wherein at least one (44) of the phases comprises from 0.0001% w/w to 99% w/w of an active volatile material (see entire document, particularly Col. 3, lines 51-68).

As to Claims 44-46, Tendick ('711) discloses that one phase (18) comprises a liquid at room temperature - in the form of a liquid fuel that is oil (see entire document, particularly Abstract, Col. 2, lines 37-42 and claim 1)

As to Claim 51, Tendick ('711) discloses that the candle (10) wherein the candle is capable of having an improved burn performance and thus is deemed to meet the limitation.

9. Claims 1 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Powell (5961967).

Powell ('967) discloses a candle comprising at least two distinct phases (first matrix, second matrix) wherein at least one (second matrix) of the phases comprises from 0.0001% w/w to 99% w/w of an active volatile material which is encapsulated inside one of the phases (see entire document, particularly Col. 6, lines 4-10 and Col. 7, lines 12-48; wherein the addition of 1 part of particles, formed from 1:1 ratio (50%) of fragrance and the second matrix, into 4 parts of the first matrix is deemed to fall in the range of from 0.0001% w/w to 99% w/w of an active volatile material).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conover (6079975) as applied to claims 10, 12-13 and 23 above, and further in view of Elliott, III (20020022205).

Conover ('975) is relied upon for disclosure described in the rejection of claims 10, 12-13 and 23 under 35 U.S.C. 102(b).

As to Claim 14, while Conover ('975) discloses a candle wherein the active volatile material is a fragrance, Conover ('975) does not appear to specifically teach that the active volatile material is also selected from the group consisting of an insecticide,

an insect repellent, an insect attractant, a deodorizing agent, and an anti-bacterial agent.

It was well known in the art at the time of invention to provide as an active volatile material an insect repellent. Elliott, III ('205) exemplifies a candle wherein an active volatile material is selected from the group of a fragrance and an insect repellent (see page 5, paragraphs [0056]-[0057]). It would have been obvious to one of ordinary skill in this art at the time of invention to provide an insect repellent as an active volatile material in the apparatus of Conover in order to provide a protection from insects/insect bites as shown by Elliott, III.

As to Claims 17-18, while Conover ('975) discloses a candle (10) wherein the active volatile material is a fragrance in the core (14 and/or 13) and is comprised of about 1.5-4.5 % w/w, Conover ('975) does not appear to specifically teach that the core is comprised from 15-99% w/w of an active volatile material.

It was well known in the art at the time of invention to provide a core of a candle with fragrance as the active material with composition of 15-99 % w/w. Elliott, III ('205) exemplifies a candle (40) wherein an active volatile material is in the core (42; see Figures 4A-4C) and is selected from the group of a fragrance with its composition up to 20 % w/w in order to provide a pleasing aromatic scent (see page 6, paragraph [0056]). It would have been obvious to one of ordinary skill in this art at the time of invention to provide the fragrance content in the range of 20% w/w as shown by Elliott, III in the candle of Conover in order to provide a stronger aromatic scent.

Thus, Claims 14, 17 and 18 would have been obvious within the meaning of 35 U.S.C. 103(a) over the combined teachings of Conover ('975) and Elliott, III ('205).

13. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott, III (20020022205) as applied to claim 23 above, and further in view of Wesley (20030086815).

Elliott, III ('205) is relied upon for disclosure described in the rejection of claim 23 under 35 U.S.C. 102(b).

While Elliott, III ('205) discloses a candle (10, 20, 30, 40) wherein at least one of the phases comprises from about 40-60% by weight of a linear  $\alpha$ -olefin or a mixture of linear  $\alpha$ -olefins (see page 3, paragraph [0028], page 4, paragraph [0038] and page 5, paragraph [0042]) and discloses that fragrance "can be used up to their characteristic solubility level in the composition of the candle", which may include 40-60% w/w, Elliott, III ('205) does not appear to specifically teach that at least one of the phases comprises from about 40-60 % w/w of a fragrance.

It was known in the art at the time of invention to provide a fragrance in a phase of a candle from about 40-60% w/w. Wesley ('815) discloses a candle (10) wherein one phase (44) of the candle (40) is comprised of from about 35-70% w/w of a volatile ingredient such as perfume oils in order to provide a scent when the candle is lighted (see page 3, paragraph [0028]). It would have been obvious to one of ordinary skill in this art at the time of invention to provide the fragrance composition of about 40-60%

w/w in one of the phases of the candle of Elliott, III in order to provide a scent as the candle is used as shown by Wesley.

Thus, Claim 26 would have been obvious within the meaning of 35 U.S.C. 103(a) over the combined teachings of Elliott, III ('205) and Wesley ('815).

14. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conover (6079975) as applied to claim 1 above, and further in view of Gunderman (3819342).

Conover ('95) is relied upon for disclosure described in the rejection of claim 1 under 35 U.S.C. 102(b).

While Conover ('975) discloses a candle, Conover ('975) does not appear to specifically teach that the at least one phase comprises up to 50 weight percent of a suitable solvent.

It was known in the art at the time of invention to provide a candle with up to 50 weight percent of a suitable solvent. Gunderman ('342) discloses a candle which is comprised of up to 50 weight percent of a suitable solvent in order to solubilize the resin used to form the candle (see entire document, particularly Abstract, Col. 2, lines 36-48 and tables for Examples 1-2 in Columns 3-4). It would have been obvious to one of ordinary skill in this art at the time of invention to provide up to 50 weight percent of a suitable solvent along with the resin in the candle of Conover in order to form a portion of a candle as shown by Gunderman.

Thus, Claim 28 would have been obvious within the meaning of 35 U.S.C. 103(a) over the combined teachings of Conover ('975) and Gunderman ('342).

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 5840257.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Yoo whose telephone number is 571-272-6690.

The examiner can normally be reached on Monday-Friday, 9:30 am - 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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